IN THE BOMBAY HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.293 OF 2003

Mr.Hari Eswaran. ...Petitioner.

vs.

Nishkalp Investments &
Trading Company Ltd. ...Respondent.

Mr.D.D.Madan i/b. Nappinai & Co, for Petitioner.

Mr.D.S.Purandare with Ms.Shakuntala Joshi, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 1st March, 2005.

P.C.:-

1. By this petition, petitioner challenges the Award dated 7th April, 2003, passed by the Arbitral Tribunal. By that Award, the petitioner has been directed

to pay the principal amount with interest, to the respondent. Before the Arbitral Tribunal, admittedly no written statement was filed by the petitioner. He has raised an objection as to the jurisdiction of Arbitral Tribunal. The objection was that there was no arbitration clause. That objection was rejected by the Arbitral Tribunal. Before me, the order of the Arbitral Tribunal, rejecting the preliminary objection, is not challenged. The learned Counsel for the petitioner submits that the petitioner had deputed a person for tendering application raising preliminary objection and that person was not the authorised representative of the petitioner, but the arbitral tribunal has treated that person as the representative of the petitioner and recorded his admissions and confessions and passed the Award on the basis of admissions given by the said person and confessions made by him, and therefore, according to the learned Counsel the Award is liable to be set aside. It is further submitted that as per the minutes of meeting of the Arbitral Tribunal dated 13th December,2002, the matter was adjourned to 6th January, 2003 for filing of reply. It was not indicated that the matter will be heard on 6th January,2003 finally, and therefore, according to the learned Counsel the closing of the case on 6th January,2003 is in violation of principles of

natural justice. It is submitted that though the matter was closed on 6th January,2003, without granting an opportunity to the petitioner to file a written statement, the Award was not made on the same day, but it was made on 7th April,2003, and therefore, learned Counsel submits that the Arbitral Tribunal could have granted time to the petitioner to file reply.

2. So far as the first submission of the petitioner is concerned, though it is true that in paragraph no.12 of the Award the Arbitrator has narrated the events and it is observed that the representative of the petitioner has admitted the documents and stated that the petitioner has no defence to offer, perusal of the paragraph no.13 shows that the Arbitrator has considered and accepted the documents produced by the claimant as true and correct because they were not controverted by the petitioner, and perusal of paragraph no.14 shows that in the absence of written statement filed by the petitioner, the Arbitrator has accepted the contentions urged and the documents filed on behalf of the claimant and held that because the petitioner has not filed his written statement, he has no defence to offer. I do not find that the Award made by the Arbitrator is

based on the admissions made by the representative of the petitioner. But the award is based on the claim statement and the documents produced with the claim statement. They have been accepted at their face value by the Arbitrator, in the absence of written statement. Perusal of Section 16 of The Arbitration and Conciliation Act,1996 shows that the objection to the jurisdiction can be raised not later than the submission of the statement of defence. Therefore, it can be said that it is not necessary that the objection to the jurisdiction should be raised only in the statement of defence. Perusal of sub-section (5) of Section 16 of the Act shows that because the Arbitral Tribunal continued further proceedings in case the objection to the jurisdiction is rejected, the party raising objection to the jurisdiction is under a duty to file its statement of defence even before the objection to the jurisdiction is decided. A party raising objection to the jurisdiction of the Arbitral Tribunal would not be justified in saying that the written statement of defence will be filed only after the decision on the preliminary objection. The petitioner, therefore, was not justified in not filing the statement of defence and the Arbitrator was justified in not adjourning the proceedings for filing of written statement. Perusal of the minutes of meeting of

arbitration dated 13th December,2002 shows that the Arbitrator had granted last and final chance to the petitioner to file reply on or before 6th January,2003 and in paragraph 3, the Arbitrator has stated as under:

> **'3. In the above circumstances the Respondent is directed to file his Written Statement accordingly and attend the next date without fail when the issues will be framed and directions will be given for evidence and arguments. In case there are no witnesses from both the sides, oral arguments will be heard and no further adjournment will be granted under any circumstance.'**

This paragraph clearly indicates that the Arbitrator has directed the petitioner to file his written statement and on that date further directions were to be given. It also indicates that in case there are no witnesses from both the sides, then oral arguments can be heard on the same date. Accordingly, the Arbitrator proceeded to hear the matter on 6th January,2003, as the petitioner had chosen not to file his written statement. I do not think that such Award can be set aside in the limited jurisdiction of this Court under Section 34 of the Arbitration & Conciliation Act,1996. The petition, in my

opinion, has no substance. Hence, the petition is disposed of. The petitioner is directed to pay cost of this petition to the respondent as incurred by the respondent.

3. At the request of learned counsel for the petitioner, the respondent is directed not to put the Award in execution till 19th April,2005.

1.3.2005 ----